

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE MARCH 31, 2005

## SENATE BILL

No. 118

**Introduced by Senator Chesbro**

**(Principal coauthors: Senators Florez and Perata)**

(Principal coauthor: ~~Assembly Member Jerome Horton~~ coauthors:

*Assembly Members Evans, Jerome Horton, and Nunez)*

**(Coauthors: Senators Battin, Bowen, Campbell, Cox, Denham, Dunn, Figueroa, Florez, Machado, Maldonado, Perata, Soto, and Torlakson)**

(Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bermudez, Chavez, Cohn, ~~Evans~~, Garcia, Jones, Karnette, *Laird*, Leslie, Lieber, McCarthy, Mountjoy, Nakanishi, Nation, Nava, Pavley, Salinas, and Wolk)

January 27, 2005

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An act to amend Section 23661.2 of, to add Section 23661.3 to, the Business and Professions Code, and to amend Section 32101 of the Revenue and Taxation Code, relating to alcoholic beverages.

### LEGISLATIVE COUNSEL'S DIGEST

SB 118, as amended, Chesbro. Alcoholic beverages: licenses and fees.

The Alcoholic Beverage Control Act imposes upon the Department of Alcoholic Beverage Control the responsibility to administer and enforce state laws with respect to alcoholic beverages, including the implementation of alcoholic beverage licensing. Among other things, the act authorizes any unlicensed adult resident of this state to apply to the department and be issued a permit to receive a shipment of wine

from any state that allows adult residents of that state to receive shipments of wine from this state, as provided. The act also provides that an individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use, and not for resale, no more than 2 cases of wine per month to any adult resident in this state.

This bill would eliminate the requirement that an unlicensed adult apply and be issued a permit to receive a shipment of wine. Additionally, this bill would allow a retail licensee to ship no more than 2 cases of wine per month.

This bill would also provide that a licensed winegrower who obtains a wine direct shipper permit, as described, may sell and ship up to 24 cases of wine annually directly to a California resident, for personal use, under specific conditions. Knowing violation of these provisions would be a misdemeanor.

By creating a new crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 23661.2 of the Business and
- 2 Professions Code is amended to read:
- 3 23661.2. Notwithstanding any other law, an individual or
- 4 retail licensee in a state that affords California retail licensees or
- 5 individuals an equal reciprocal shipping privilege, may ship, for
- 6 personal use and not for resale, no more than two cases of wine
- 7 (no more than nine liters each case) per month to any adult
- 8 resident in this state. Delivery of a shipment pursuant to this
- 9 subdivision shall not be deemed to constitute a sale in this state.
- 10 The shipping container of any wine sent into or out of this state
- 11 under this section shall be clearly labeled to indicate that the

1 container cannot be delivered to a minor or ~~to~~ an intoxicated  
2 person.

3 SEC. 2. Section 23661.3 is added to the Business and  
4 Professions Code, to read:

5 23661.3. (a) Notwithstanding any law, rule, or regulation to  
6 the contrary, any person currently licensed in this state or any  
7 other state as a winegrower who obtains a wine direct shipper  
8 permit pursuant to this section may sell and ship up to 24  
9 nine-liter cases of wine annually directly to a resident of  
10 California, who is at least 21 years of age, for the resident's  
11 personal use and not for resale.

12 Before sending any shipment to a resident of California, the  
13 wine direct shipper permit holder must:

14 (1) File an application with the department.

15 (2) Pay a ten dollar (\$10) annual registration fee if the  
16 winegrower is not currently licensed by the department.

17 (3) Provide the department its California alcoholic beverage  
18 license number or a true copy of its current alcoholic beverage  
19 license issued by another state.

20 (4) Obtain from the department a wine direct shipper permit.

21 (5) Obtain a valid seller's permit pursuant to Article 2  
22 (commencing with Section 6066) of Chapter 2 of Part 1 of  
23 Division 2 of the Revenue and Taxation Code.

24 (b) A wine direct shipper permit authorizes the permit holder  
25 to do all of the following:

26 (1) Sell and ship not more than 24 nine-liter cases of wine  
27 annually to any person 21 years of age or older for his or her  
28 personal use and not for resale.

29 (2) Ship wine directly to a resident in this state only in  
30 containers that are conspicuously labeled with the words:  
31 "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21  
32 YEARS OR OLDER REQUIRED FOR DELIVERY."

33 (3) Ship wine only if the permit holder requires the carrier to  
34 obtain the signature of any individual 21 years of age or older  
35 before delivering any wine shipped to an individual in this state.

36 (4) If the permit holder is located outside of this state, report to  
37 the department no later than January 31 of each year, the total  
38 amount of wine shipped into the state during the preceding  
39 calendar year under the wine direct shipper permit.

1 (5) If the permit holder is located outside of this state, pay to  
2 the State Board of Equalization all sales and use taxes on sales to  
3 residents of California under the wine direct shipper permit, the  
4 amount of those taxes to be calculated as if the sale were made in  
5 California at the location of the delivery.

6 (6) If located within this state, provide the department any  
7 necessary additional information not currently provided to ensure  
8 compliance with this section.

9 (7) Permit the department or the State Board of Equalization to  
10 perform an audit of the wine direct shipper permit holder's  
11 records upon request.

12 (8) Be deemed to have consented to the jurisdiction of the  
13 department or any other state agency and the California courts  
14 concerning enforcement of this section any related laws, rules, or  
15 regulations.

16 (d) A wine direct shipper permit holder located outside of the  
17 state may annually renew its permit with the department by  
18 paying a ten dollar (\$10) renewal registration fee and providing  
19 the department with a true copy of its current alcoholic beverage  
20 license issued by another state. A wine direct shipper permit  
21 holder located in California shall renew its wine direct shipper  
22 permit in conjunction with its master license. For purposes of this  
23 section, "master license" means a winegrower's license issued by  
24 the department.

25 (e) The department and the State Board of Equalization may  
26 promulgate rules and regulations to effectuate the purposes of  
27 this law.

28 (f) The department may enforce the requirements of this  
29 section by administrative proceedings to suspend or revoke the  
30 wine direct shipper permit, and the department may accept  
31 payment of an offer in compromise in lieu of suspension as  
32 provided by this division. Any hearing held pursuant to Chapter  
33 5 (commencing with Section 11500) of Part 1 of Division 3 of  
34 Title 2 of the Government Code against a permit holder outside  
35 of California shall be held in Sacramento.

36 (g) Sales and shipments of wine direct to consumers in  
37 California from persons who do not possess a current wine direct  
38 shipper permit from the department are prohibited. Any person  
39 who knowingly makes, participates in, transports, imports, or

1 receives such a shipment is guilty of a misdemeanor pursuant to  
2 Section 25617.

3 SEC. 3. Section 32101 of the Revenue and Taxation Code is  
4 amended to read:

5 32101. The issuance of any manufacturer's, winegrower's,  
6 wine blender's, distilled spirits manufacturer's agent's,  
7 rectifier's, wholesaler's, importer's, customs broker's license, or  
8 wine direct shipper permit under Division 9 (commencing with  
9 Section 23000) of the Business and Professions Code shall  
10 constitute the registration of the person to whom the license or  
11 permit is issued as a taxpayer under this part. Upon the issuance  
12 of any such license the Department of Alcoholic Beverage  
13 Control shall furnish a copy thereof to the board.

14 SEC. 4. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the  
19 penalty for a crime or infraction, within the meaning of Section  
20 17556 of the Government Code, or changes the definition of a  
21 crime within the meaning of Section 6 of Article XIII B of the  
22 California Constitution.